

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 01-0257 AGI
ADJUSTED GROSS INCOME TAX
FOR TAX PERIODS: 1999-2000

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Issues

Adjusted Gross Income Tax: Imposition

Authority: IC 6-3-2-1 (a), IC 6-3-2-2 (a), *State Election Board v. Evan Bayh*, 521 N.E.2d 1212, (Ind. 1988).

Taxpayer protests the imposition of the adjusted gross income tax.

Statement of Facts

The taxpayers are a married couple who own an Indiana home. The husband also owns a Florida condo. The husband is the family wage earner. They filed a 1999 Indiana Part-Year or Full-Year Nonresident Individual Income Tax Return and requested a refund. Upon routine review, the Indiana Department of Revenue, "department", determined that the taxpayers understated their Indiana income. The department adjusted the return and assessed additional tax. Therefore, the department issued a smaller refund check. The taxpayers did not address the reduced refund at that time. Again in 2000, the taxpayers filed an Indiana Part-Year or Full-Year Nonresident Individual Income Tax Return and requested a refund. Again the department determined that they understated their Indiana income, assessed additional tax and issued a reduced refund check to the taxpayers. The taxpayers originally protested the additional assessments for both 1999 and 2000. On November 2, 2001 the taxpayers withdrew their protest to the additional taxes assessed for 1999. Further facts will be provided as necessary.

Adjusted Gross Income Tax: Imposition

Discussion

Indiana imposes an adjusted gross income tax pursuant to the following provisions of IC 6-3-2-1 (a):

Each taxable year, a tax at the rate of three and four-tenths percent (3.4%) of adjusted gross income is imposed upon the adjusted gross income of every resident person, and on that part of the adjusted gross income derived from sources within Indiana of every nonresident person.

The department assessed adjusted gross income tax on the taxpayer's income as an Indiana resident. The taxpayer contends that he earned the income as a nonresident of Indiana and is not subject to the imposition of the tax. The issue to be determined is whether or not the taxpayer was an Indiana resident for purposes of Indiana adjusted gross income taxation during the 2000 tax year.

For purposes of adjusted gross income tax, IC 6-3-1-12 defines the term "resident" as "any individual who was domiciled in this state during the taxable year." In accordance with this definition, the taxpayer would be considered an Indiana resident and subject to tax on income earned during the period when he was domiciled in Indiana.

Indiana tax assessments are presumed to be correct and taxpayers bear the burden of proving that any particular assessment is incorrect. IC 6-8.1-5-1 (b).

The Indiana Supreme Court considered the issue of the meaning of domicile in *State Election Board v. Evan Bayh*, 521 N.E.2d 1212, (Ind. 1988). In that case, Mr. Bayh desired to run for governor of the state. Pursuant to public discussion concerning whether Mr. Bayh met the residency requirements for governor, Mr. Bayh sought a declaratory judgment determining that he met the residency requirement. The Indiana Supreme Court affirmed the trial court's decision that the standard for residency was whether or not Mr. Bayh had an Indiana domicile. It also affirmed that Mr. Bayh was domiciled in Indiana.

Domicile in Indiana is defined as "the place where a person has his true, fixed, permanent home and principal establishment, and to which place he has, whenever he is absent, the intention of returning." *State Election Board* at page 1317. Once established, a person's domicile is presumed to continue until the person's actions provide adequate evidence that along with moving to another jurisdiction, the person intends to establish a domicile in the new residence. Whether or not the person has successfully established a new domicile is a question of fact to be determined by the trier of fact. *Id.* at page 1317. Some of the facts considered were that Mr. Bayh paid in-state tuition at Indiana University, out-of-state tuition at the University of Virginia law school and voted in the elections in Vigo County, Indiana. He also registered for the draft from Indiana. The Supreme Court considered these acts adequate evidence to prove that Mr. Bayh intended to return to Indiana and retained his Indiana domicile even though he had lived outside the state for several years.

The taxpayer withdrew his protest to the taxes assessed for 1999, thus agreeing that he was domiciled in Indiana through December 31, 1999. During the year 2000, the taxpayer maintained both Indiana and Florida residences. His family resided at the Indiana home. He filed a homestead exemption, however, only on his Indiana residence. He never filed a Florida Declaration of Domicile or Florida intangibles tax return. He renewed his Indiana driver's license on March 15, 2000 and received a Florida driver's license on May 18, 2000. On September 20, 2000, the taxpayer told a department employee that he intended to vote from his Indiana address in the fall, 2000 election. The taxpayer registered to vote in Florida on October 10, 2000. He voted in Florida on November 7, 2000. The totality of these actions and failures to act do not clearly evidence that taxpayer intended to change his domicile to Florida.

The taxpayer did not meet his burden of proving that he changed his domicile from Indiana to Florida.

Finding

The taxpayer's protest is denied.

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